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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

EMI C. LONG, aka EMI C. FARLEY and
KIRK P. FARLEY, husband and wife,

Plaintiffs,

vs.

PACIFIC WOMEN'S CENTER, LLC, an
Oregon Corporation;
RICHARD BEYERLEIN, MD;
PROVIDENCE ST. JOSEPH HEALTH, a
Washington Corporation;
PROVIDENCE HEALTH & SERVICES, a
Washington corporation;
PROVIDENCE HEALTH & SERVICES -
WASHINGTON, a Washington
corporation, dba PROVIDENCE ST.
PETER HOSPITAL and PROVIDENCE
MEDICAL GROUP;
COREY SULLIVAN MD;
JOHN NGO, DO;
ARIN BRASETH, MD;
BAYER HEALTHCARE, LLC,
a Delaware Corporation;
BAYER MEDICAL CARE, INC.,
a Delaware Corp.; and
BAYER HEALTHCARE
PHARMACEUTICALS, INC., a Delaware
corporation;

Defendants.

Case No.

COMPLAINT FOR MEDICAL
NEGLIGENCE AND PRODUCTS
LIABILITY

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs, by and through counsel undersigned, and for their Complaint hereby allege as follows:

NATURE OF THE ACTION

1. This is a medical negligence and product liability action for damages caused by the ingestion of the pharmaceutical drug Beyaz which caused a stroke that was negligently diagnosed and treated, resulting in severe, permanent brain damage and neurologic injury to plaintiff Emi Long (Farley). Her husband, plaintiff Kirk Farley, brings a loss of consortium claim.

PARTIES

2. Plaintiff EMI C. LONG, aka EMI C. FARLEY, is a citizen of Tennessee.

3. Plaintiff KIRK P. FARLEY, is Plaintiff Emi Long's husband and also a citizen of Tennessee.

4. Defendant, BAYER HEALTHCARE PHARMACEUTICALS, INC., is a Delaware corporation with its principal place of business in New Jersey. At all times material, this Defendant was engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the prescription birth control drug, Beyaz. Defendant BAYER HEALTHCARE PHARMACEUTICALS, INC. conducted regular and sustained business in Oregon by selling and distributing its products here. It has a Registered Agent in Salem, Oregon.

5. Defendant, BAYER HEALTHCARE, LLC, is a Delaware corporation with its principal place of business in New Jersey. At all times material, this Defendant was engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and/or introducing into interstate commerce,

either directly or indirectly through third parties or related entities, the prescription birth control drug, Beyaz. Defendant BAYER HEALTHCARE, LLC, conducted regular and sustained business in Oregon by selling and distributing its products here. It has a Registered Agent in Salem, Oregon.

6. Defendant BAYER MEDICAL CARE, INC, is a Delaware corporation with its principal place of business in Pennsylvania. At all times material this Defendant was engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the prescription birth control drug, Beyaz. Defendant BAYER MEDICAL CARE, INC., conducted regular and sustained business in Oregon by selling and distributing its products here. It has a Registered Agent in Salem, Oregon.

7. BAYER HEALTHCARE PHARMACEUTICALS, INC., BAYER HEALTHCARE, LLC, and/or BAYER MEDICAL CARE, INC, hereinafter will be referred to individually and collectively as “Defendant Bayer.”

8. PACIFIC WOMEN'S CENTER, LLC, (herinafter "Defendant Clinic") was at all times material, an Oregon Corporation licensed to do business in Oregon and engaged in the provision of healthcare to Plaintiff Emi Long. Its principal place of business was and is in Lane County, Oregon.

9. RICHARD BEYERLEIN, MD, (hereinafter “Defendant Beyerlein”) was at all times material, a physician licensed in the State of Oregon, specializing in gynecology and engaged in the provision of healthcare to Plaintiff Emi Long. Based on information and belief he is a citizen of Oregon.

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10. PROVIDENCE ST. JOSEPH HEALTH, is a Washington Corporation, with its principle place of business in Washington. It is licensed to do business in the States of Washington and Oregon and has a Registered Agent in Salem, Oregon. Through the actions of physician and non-physician health care providers acting as employees and/or agents, real or apparent, it was engaged in the business of providing health care to Plaintiff Emi Long at various Providence facilities.

11. PROVIDENCE HEALTH & SERVICES, is a Washington Corporation, with its principle place of business in Washington. It is a corporation licensed to do business in the States of Washington and Oregon and has a Registered Agent in Salem, Oregon. Through the actions of physician and non-physician health care providers acting as employees and/or agents, real or apparent, it was engaged in the business of providing health care to Plaintiff Emi Long at various Providence facilities.

12. PROVIDENCE HEALTH & SERVICES - WASHINGTON, is a Washington Corporation, with its principle place of business in Washington. It is licensed to do business in the States of Washington and Oregon and has a registered agent in Salem, Oregon. Through the actions of physician and non-physician health care providers acting as employees and/or agents, real or apparent, it was engaged in the business of providing health care to Plaintiff Emi Long at various Providence facilities.

13. PROVIDENCE HEALTH & SERVICES - WASHINGTON did business as PROVIDENCE ST. PETER HOSPITAL and PROVIDENCE MEDICAL GROUP. Defendants PROVIDENCE ST. JOSEPH HEALTH, PROVIDENCE HEALTH & SERVICES - WASHINGTON, and PROVIDENCE HEALTH & SERVICES - WASHINGTON are referred to hereinafter collectively and individually as "Defendant Providence."

14. COREY SULLIVAN, MD, (hereinafter "Defendant Sullivan") was at all times material a physician licensed in the State of Washington, practicing family

medicine as an agent or employee of Defendant Providence and engaged in the provision of healthcare to Plaintiff Emi Long. Based on information and belief he is a citizen of Washington.

15. JOHN NGO, DO, (hereinafter "Defendant Ngo") was at all times material a physician licensed in the State of Washington, practicing emergency medicine as an agent or employee of Defendant Providence St. Peter Hospital and engaged in the provision of healthcare to Plaintiff Emi Long. Based on information and belief he is a citizen of Washington.

16. ARIN BRASETH, MD, (hereinafter "Defendant Braseth") was at all times material a physician licensed in the State of Washington, practicing emergency medicine as an agent or employee of Defendant Providence. Based on information and belief he is a citizen of Washington.

JURISDICTION

17. This court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

VENUE

18. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claims alleged in the Complaint occurred in the State of Oregon and, more specifically, within the Eugene Division.

FACTS

19. Defendant Bayer designed, manufactured, sold and distributed Beyaz which was advertised by Defendant Bayer to the medical community at large to be a safe and reliable medication.

20. Defendant Bayer knew, or should have known, that Beyaz was associated with significantly higher risk of stroke than earlier generation oral contraceptives not containing drospirenone.

21. Defendant Bayer withheld reporting Beyaz data it knew, or should have known, showed a significantly increased risk for stroke with increasing patient age.

22. Defendant Bayer knew, or should have known, that Beyaz had not been sufficiently tested, particularly in women over the age of 36; was defective in design and/or testing; and/or that it lacked adequate warnings.

23. Defendant Bayer knew or should have known Beyaz could and would cause severe injury by stroke events, to its users, and that Beyaz was inherently dangerous in a manner that exceeded its advertising and promotional literature.

24. Defendants Clinic, Beyerlein, Providence and Sullivan recommended Beyaz to Plaintiff Emi Long and prescribed it to her.

25. Defendants Clinic, Beyerlein, Providence and Sullivan knew or should have known that Plaintiff Emi Long suffered from migraines, which further increased her risk of stroke from Beyaz.

26. On or about May 20, 2017, at 43 years of age, Plaintiff Emi Long sought care from Defendants Providence and Ngo for a migraine headache with transient neurologic deficits. Defendants did not evaluate Plaintiff for stroke, nor did they advise her to stop taking Beyaz because of increased risk of stroke.

27. On or about November 29, 2017, Ms. Long developed stroke symptoms and promptly sought care from defendants Providence and Braseth. They delayed in obtaining diagnostic imaging of her brain and failed to undertake timely medical intervention.

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28. As a result, Ms. Long suffered a major stroke related to Beyaz that damaged her brain and neurologic system.

DAMAGES

29. The physical and emotional injuries Ms. Long sustained as a result of the stroke and its aftermath are severe, permanent, disfiguring and life altering. She has undergone extensive medical care, requires assistance in all physical activities of daily living, and will require extensive ongoing medical care, therapy and accommodations for her physical disabilities. She has sustained both economic and non-economic damages in an amount to be determined at trial.

30. Plaintiff Kirk Farley has suffered physical and emotional distress and has been deprived of the companionship and consortium of his wife, to his non-economic damage in an amount to be determined at trial.

FIRST CLAIM FOR RELIEF

(STRICT PRODUCT LIABILITY)

31. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

32. This is an action for strict liability against Defendant Bayer based on a design defect, inadequate testing, and/or failure to adequately warn regarding Beyaz.

33. Beyaz was unreasonably dangerous in its design, with the risks outweighing the benefits for its use, and in its failure to perform as safely as an ordinary consumer would expect when taken daily as directed. Safer alternative medications that do not contain the combination of drospirenone and ethinyl estradiol have been available for years and continue to be available.

34. Defendant Bayer failed to adequately test the safety of Beyaz in the populations for which the drug is marketed. Specifically Defendant Bayer failed to

adequately test the safety of Beyaz in women over 40 years old, such as plaintiff Emi Long.

35. Defendant Bayer had a duty to make timely and adequate warnings to physicians and other prescribing healthcare providers of the risks associated with its product Beyaz in women over the age of 36 years and/or who have migraine headaches. These conditions were both specific to Ms. Long and applicable to other women using Beyaz. Defendant Bayer failed to provide timely and adequate warnings.

36. Defendant Bayer's design defect, inadequate testing, and/or failure to warn regarding Beyaz caused Plaintiffs injuries and damages as alleged above.

37. Defendant Bayer's conduct was outrageous, as described above, and also in its withholding of information known to be material and relevant to the harm suffered by Ms. Long.

SECOND CLAIM FOR RELIEF

(NEGLIGENCE)

38. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

39. Defendants Pacific Women's Center, LLC, and Richard Beyerlein, MD were negligent in treating Plaintiff Emi Long with Beyaz when they knew or should have known that she was at significant risk of stroke that made Beyaz an unreasonable choice for a combination oral contraceptive with which to treat her. They were also negligent in failing to warn her that the risk of stroke from Beyaz increased as she aged.

40. Defendant Bayer was negligent in one or more of the following ways that caused damage to plaintiffs:

- (a) In failing to properly test Beyaz before placing it into the stream of commerce to assure it would be safe for older consumers such as

Plaintiff Emi Long;

- (b) In designing Beyaz such that it would be unreasonably dangerous for women over 40 years old;
- (c) In marketing Bayez when it knew or should have known that it was unreasonably dangerous for women over 40 years old and women with migraine headaches; and
- (d) In failing to warn the public, and prescribing healthcare providers that Bayez use placed older women at significantly increased risk of stroke and placed women with migraines at significantly increased risk for stroke.

41. Defendants Providence and Ngo were negligent in one or more of the following ways that caused damage to plaintiffs:

- (a) In failing to evaluate and treat Ms. Long for a stroke event associated with Beyaz;
- (b) In failing to advise Ms. Long that her symptoms were due to Beyaz;
- (c) In failing to advise Ms. Long to stop taking Beyaz due to the increased risk of stroke; and
- (d) In failing to warn Ms. Long that she was at substantially increased risk of stroke from Beyaz because of her age and migraine headache history.

42. Defendants Providence and Sullivan were negligent in one or more of the following ways that caused damage to plaintiffs:

- (a) In recommending and prescribing Beyaz to Ms. Long when there were other safer treatments available;

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- (b) In continuing to treat Ms. Long with Beyaz given her age and history of migraine headache and neurologic complaints;
- (c) In continuing to treat Ms. Long with Beyaz after her emergency department visit in May, 2017; and
- (d) In failing to warn Ms. Long of the significant stroke risk from taking Beyaz given her age and migraine history.

43. Defendants Providence and Braseth were negligent on beginning on November 29, 2017 in one or more of the following ways that caused damage to plaintiffs::

- (a) In failing to promptly obtain brain imaging;
- (b) In failing to obtain an accurate history;
- (c) In failing to do a thorough neurologic examination;
- (d) In failing to give a thrombolytic or arrange other vascular intervention treatment;
- (e) In failing to re-examine Ms. Long when she exhibited new neurologic symptoms within the time-frame for thrombolytic therapy; and
- (f) In failing to have the neurology consultant examine Ms. Long within the time-frame necessary so that thrombolysis or other vascular intervention could be safely performed;

THIRD CLAIM FOR RELIEF

(LOSS OF CHANCE)

44. In the alternative to her Second Claim for Relief, Plaintiff Emi Long re-alleges and incorporates by reference as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

45. As a direct result of the negligence of Defendants, and each of them, Plaintiff Emi Long suffered a stroke and it was not diagnosed and treated in a timely fashion such that she was deprived of a 20% or greater chance of an improved neurologic outcome, to a reasonable medical probability.

FOURTH CLAIM FOR RELIEF

(LOSS OF CONSORTIUM)

46. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows.

47. The negligence of Defendants, and each of them, caused Plaintiff Kirk Farley's wife, Emi Long, to sustain permanent, disabling brain injuries. As a result, he has suffered a loss of consortium, loss of enjoyment of life, and loss of services with and from his wife.

FIFTH CLAIM FOR RELIEF

(LOSS OF CHANCE/LOSS OF CONSORTIUM)

48. In the alternative to the Fourth Claim for Relief, Plaintiff Kirk Farley incorporates by reference, as if fully set forth herein, the allegations in paragraphs 46 and 47, above and further allege as follows.

49. As a direct result of the negligence of Defendants, and each of them, Plaintiff Emi Long suffered a stroke and it was not diagnosed and treated in a timely fashion such that she was deprived of a 20% or greater chance of an improved neurologic outcome, to a reasonable medical probability.

WHEREFORE, Plaintiffs pray for Judgment in their favor to include the following:

1. An award of non-economic and economic damages on their First through Fifth Claims for Relief in the amount to be proven at trial;

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2. For such relief as the court deems just, equitable, and proper; and
3. An award of costs and disbursements incurred herein.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL

DATED this 27th day of November, 2019.

MILLER & WAGNER, LLP

/s/ Robert S. Wagner
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